88-1124

No.

Supreme Court, U.S.
FILED
JAN 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CITY OF BERWYN, and
MAYOR JOSEPH J. LANZILLOTTI,

Petitioners,

v.

PIZZATO'S, INC., ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

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QUESTION PRESENTED

1. Whether Illinois' refusal to apply the collateral order doctrine to allow for the immediate appeal from the denial of a public official's substantial claim of absolute immunity in a § 1983 action brought in state court is preempted under the Supremacy Clause because the decision is inconsistent with the goals of the Federal Civil Rights Laws and with this Court's holdings in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), and *Mitchell v. Forsyth*, 472 U.S. 511 (1985).

PARTIES TO THE PROCEEDINGS

Respondents, Pizzato's, Incorporated, an Illinois corporation, Horace D'Angelo and John Burnett, brought this action against Petitioners, the City of Berwyn and Mayor Joseph J. Lanzillotti. There are no other parties to these proceedings.

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In The

Supreme Court of the United States

October Term, 1988

CITY OF BERWYN, and
MAYOR JOSEPH J. LANZILLOTTI,

Petitioners,

v.

PIZZATO'S, INC., ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

OPINIONS BELOW

This civil rights case was brought in the Circuit Court of Cook County, Illinois. On September 17, 1986, the trial court entered an order denying Mayor Joseph J. Lanzillotti's motion to dismiss asserted on grounds of absolute immunity (App. 5). On December 31, 1986, the trial court denied Mayor Lanzillotti's motion for reconsideration, and in the alternative, to either certify the question for interlocutory appeal or to issue a written finding that there was no just reason for delay in the enforcement of the appeal (App. 6).

Nonetheless, Mayor Lanzillotti appealed under the collateral order doctrine. The Appellate Court of Illinois, First District, dismissed Mayor Lanzillotti's appeal on March 31, 1988. *Pizzato's, Inc., et al. v. City of Berwyn, et al.*, 168 Ill. App. 3d 796, 523 N.E.2d 51 (1988) (App. 1-3). On October 6, 1988, the Illinois Supreme Court denied petitioners' petition for leave to appeal without issuing an opinion (App. 4).

JURISDICTIONAL STATEMENT

Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a). The Appellate Court of Illinois, First District, issued its opinion dismissing Mayor Lanzillotti's appeal on March 31, 1988. The Illinois Supreme Court denied petitioners' Petition for Leave to Appeal on October 6, 1988. This Petition for a Writ of Certiorari was filed within ninety days of the denial of the Petition for Leave to Appeal to the Illinois Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents' complaint asserted violations of their Federal Civil Rights under 42 U.S.C. § 1983 of the Civil Rights Act. The text of § 1983 is set forth in the Appendix to this Petition (App. 7).

STATEMENT OF THE CASE

In April, 1981, the interim mayor of the City of Berwyn issued a liquor license to Pizzato's, Inc., an Illinois corporation. The liquor license was issued to Pizzato's even though the addition of this new license caused the number of liquor licenses in the City of Berwyn to exceed the limit of sixty-five (65) as established by Berwyn Ordinance 804.07 (R. C.228, 237). In September, 1981, newly elected Mayor of the City of Berwyn, Joseph J. Lanzillotti, discovered that Pizzato's license was illegally obtained in that it was the sixty-sixth (66th) liquor license issued in the City (R. C.248). Accordingly, Mayor Lanzillotti, acting as local liquor commissioner for the City of Berwyn, notified Pizzato's that its liquor license would not be renewed as of December 31, 1981 (R. C.232).

Respondents, Pizzato's, Inc., an Illinois corporation, Horace D'Angelo and John Burnett, (hereinafter referred to as Pizzato's) brought a three-count complaint in the Circuit Court of Cook County, Illinois, against petitioners, Mayor Joseph J. Lanzillotti and the City of Berwyn, under § 1983 of the Civil Rights Act[1] (R. C.2-11). In Counts II and III of the complaint, Pizzato's sought damages and alleged that Mayor Lanzillotti, while acting as local liquor commissioner for the City of Berwyn, acted maliciously and in bad faith when he denied Pizzato's petition to renew its liquor license in December, 1981 (R. C.8-10).

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[1] Count I of respondents' complaint sought mandamus relief ordering Mayor Lanzillotti to issue Pizzato's, Inc., a liquor license. The trial court granted the writ requiring the issuance of a license and transferred the case to the law division to address respondents' damage claims (R. C.559-560).

Mayor Lanzillotti moved to dismiss Pizzato's civil rights claims against him on the basis that he enjoyed absolute immunity from suit while acting in his quasi-judicial capacity as local liquor commissioner for the City of Berwyn (R. C.698-699). The trial court denied the motion holding that the Mayor was not entitled to absolute immunity (R. C.736, App. 5).

Mayor Lanzillotti subsequently filed a motion for reconsideration, and in the alternative, moved the trial court to either certify the immunity issue for interlocutory appeal or to issue a written finding that there was no just reason for delaying the enforcement of the appeal (R. C.742-747). On December 31, 1986, the trial court entered an order denying Mayor Lanzillotti's motions (R. C.774, App. 6).

Mayor Lanzillotti then appealed the trial court's denial of his claim of absolute immunity pursuant to the collateral order doctrine as set forth in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), and *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The Illinois Appellate Court, First District, dismissed Mayor Lanzillotti's appeal holding that the denial of a motion to dismiss is not a final and appealable order (App. 1-3).

The Illinois Appellate Court declared in its opinion that "[r]egardless of how well reasoned the 'collateral order' doctrine may be, it cannot be used to confer jurisdiction upon this court where none exists under Illinois law" (App. 3). The Appellate Court determined that it lacked jurisdiction to consider the appeal because the Illinois Supreme Court had not provided by rule for an appeal "from this type of order" (App. 3).

Mayor Lanzillotti then filed a petition for leave to appeal to the Illinois Supreme Court urging the state's high-

est court to follow federal law in this § 1983 action and allow for the immediate appeal of the denial of Mayor Lanzillotti's claim of absolute immunity.[2] On October 6, 1988, the Illinois Supreme Court denied the petition for leave to appeal without opinion (App. 4).

REASONS FOR GRANTING THE WRIT

FEDERAL LAW GUARANTEES ILLINOIS PUBLIC OFFICIALS THE RIGHT TO IMMEDIATE APPELLATE REVIEW OF THE DENIAL OF A CLAIM OF OFFICIAL IMMUNITY IN A SECTION 1983 ACTION BROUGHT IN STATE COURT.

Just as federal courts are required to apply state law to state claims, (*Erie Railroad Company v. Tompkins*, 304 U.S. 64 [1938]), the Supremacy Clause of the United States Constitution imposes on state courts a constitutional duty to protect substantial rights of the parties under controlling federal law. *Guaranty Trust Company v. York*, 326 U.S. 99, 109 (1945). Although the states are generally permitted to establish their own rules of civil procedure, state courts entertaining federal actions are preempted from using these local forms of practice to thwart a federal right. *Felder v. Casey*, 108 S.Ct. 2302, 2306 (1988), *citing Brown v. Western Railway of Alabama*, 338 U.S. 294, 296 (1949). This Court has long recognized that "any state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law, must yield." *Felder*, 108 S.Ct. at 2306, *citing Free v. Bland*, 369 U.S. 663, 666 (1962).

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[2] The issue was one of first impression before the court.

The general rule in Illinois, and under federal law, is that the denial of a motion to dismiss is not a final and appealable order. *See, e.g., People v. American National Bank & Trust Co.*, 32 Ill. 2d 115, 117, 203 N.E.2d 897 (1965); 28 U.S.C. § 1291. Illinois may, if it chooses, apply the general rule without exception to all state law claims brought before an Illinois court. The general rule must yield, however, when its application undermines or interferes with rights guaranteed under federal law. *See Dice v. Akron, Canton & Youngstown Railroad Co.*, 342 U.S. 359 (1952).

The federal law which is threatened by the Appellate Court's holding in this case is the immunity from the burdens of litigation and damages enjoyed by public officials sued in cases brought under the Civil Rights Act. *See, e.g., Forrester v. White*, 108 S.Ct. 538 (1988); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Imbler v. Pachtman*, 424 U.S. 409 (1976). The federal law which seeks to ensure that those immunities are fully recognized was established by two relatively recent opinions which give public officials the right to appeal the denial of a substantial claim of immunity. *Mitchell v. Forsyth*, 472 U.S. 511 (1985) (denial of Attorney General's claim of qualified immunity final and appealable under collateral order doctrine); *Nixon v. Fitzgerald*, 457 U.S. 731 (1982) (denial of president's claim of absolute immunity immediately appealable). In applying the collateral order exception to the general rule prohibiting appeals from the denial of motions to dismiss, this Court has afforded public officials who are forced to defend their conduct in civil rights actions with the substantive right to seek immediate appellate review from the denial of a claim of immunity.

The application of the collateral order doctrine to public officials' immunity claims is consistent with the federal government's role as guarantor of basic federal rights; a role which was firmly established in the context of civil

rights claims when this Court held that governmental officials acting under color of state law are liable for violations of the Fourteenth Amendment. *See Monroe v. Pape*, 365 U.S. 167 (1961) *overruled on other grounds, Monell v. Dept. of Soc. Serv. of the City of New York*, 436 U.S. 658 (1978). This interpretation of § 1983 offered private citizens a unique federal remedy against incursions by state actors upon rights secured by the Constitution and the laws of the Nation. *Mitchum v. Foster*, 407 U.S. 225, 238 (1972). Recognizing that counterveiling policy considerations require public officials to be free to discharge their duties with a minimum of disruption and inhibition, however, this Court's decisions in *Nixon* and *Mitchell* help ensure that the broad scope of § 1983 will not be utilized to defeat effective public service.

It has been clear since 1970 that jurisdiction over § 1983 claims is concurrent in both the state and federal courts. *See Maine v. Thiboutot*, 448 U.S. 1 (1980); *Martinez v. California*, 444 U.S. 227 (1980). Accordingly, it has only been in the past few years that state courts have been called upon to adjudicate civil rights claims with any regularity. This relative inexperience has occasionally resulted in some anomalous results in civil rights actions brought in state courts. *See, e.g., Stutzman v. Chicago Board of Education*, 121 Ill. Dec. 596, 525 N.E.2d 906 (1st Dist. 1988) (property interest implicated only by public employee's termination, but not lengthy suspension); *Young v. City of Centreville*, 523 N.E.2d 621 (5th Dist. 1988) (Illinois court applied standards for deadly force enunciated by Supreme Court in 1985 to incident which occurred in 1981 with no discussion of qualified immunity). Similarly, the Illinois Appellate Court's refusal to even consider the extensive and cogent analysis applied by this Honorable Court in both *Nixon* and *Mitchell* represents a major retreat from its obligation to provide for the adjudication

of civil rights claims in accordance with the policy considerations enunciated by this Honorable Court and the United States Congress.

In the language of 42 U.S.C. § 1988, Congress has specifically instructed the courts to follow the "laws of the United States, so far as such laws are suitable," when determining the rules of decision applicable to claims brought under § 1983. 42 U.S.C. § 1988. *See Wilson v. Garcia*, 471 U.S. 261, 266 (1985), *citing Burnett v. Grattan*, 468 U.S. 42, 47-48 (1984). If no suitable federal rule exists, then courts may consider applying state law so long as it is "not inconsistent with the Constitution and the laws of the United States." *Id.* The resort to state law should not be undertaken, however, before principles of federal law are exhausted. *Wilson*, 471 U.S. at 270.

The Illinois Appellate Court's refusal to consider the denial of Mayor Lanzillotti's claim of absolute immunity was in direct contravention of the goals of Congress as expressed in 42 U.S.C. § 1988. The "law of the United States" as explained in *Nixon* and *Mitchell* entitles an official to immediate appellate review from the denial of a claim of official immunity in a § 1983 action. *Mitchell*, 472 U.S. at 511; *Nixon*, 457 U.S. at 731. This law is as equally applicable to federal civil rights actions brought in state court as with those asserted in federal court. *See, e.g., Felder*, 108 S.Ct. at 2313. In refusing to apply federal law, the Illinois court has frustrated Congress' intent that the characterization of § 1983 be measured by federal rather than state standards. *Wilson*, 471 U.S. at 268-69.

The importance of adjudicating all civil rights claims in accordance with the principles set forth by this Court cannot be overstated. This Court has demonstrated a keen sensitivity in balancing the availability of a comprehensive remedy for civil rights proponents against the governmental interest in efficient and vigorous public service.

Compare, e.g., Patsy v. Board of Regents of Florida, 457 U.S. 496 (1982) (plaintiffs need not exhaust state administrative remedies before instituting § 1983 suits in federal court) *with Daniels v. Williams*, 474 U.S. 327 (1986) (mere negligence not actionable under the Due Process Clause of the Fourteenth Amendment). In recognition of the distraction and anxiety inherent in defending a civil rights claim, along with the broader chilling effect on public service, this Court's decisions to grant public officials certain immunities constitute key cogs in that delicate balance. *See, e.g., Davis v. Scherer*, 468 U.S. 183 (1984); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Imbler v. Pachtman*, 424 U.S. 409 (1976).

Similarly, in providing for immediate appellate review from the denial of claims of official immunity, this Court has strengthened the public official's insulation from the burdens of discovery and trial in appropriate cases. *Mitchell*, 472 U.S. at 511; *Nixon*, 457 U.S. at 731. To prevent public officials from appealing such issues before trial would forever deprive them of appellate review of a defense intended to provide immunity from suit as opposed to a mere immunity from liability. *Mitchell*, 472 U.S. at 526. Indeed, the immunity is effectively lost once the case proceeds to trial. *Id.*

The Illinois Appellate Court refused to consider these important policy considerations when it dismissed Mayor Lanzillotti's appeal. In determining that it lacked jurisdiction, the Appellate Court took the position that it was not bound to follow federal law (App. 1-3). The court declared in its opinion that "[r]egardless of how well reasoned the 'collateral order' doctrine may be, it cannot be used to confer jurisdiction upon this court where none exists under Illinois law." (App. 3).

To the contrary, the Supremacy Clause mandates that Illinois public officials be allowed the right to immediate-

ly appeal the denial of a claim of official immunity in federal civil rights actions. The general rule in Illinois which prohibits an immediate appeal from the denial of a motion to dismiss becomes more than a "mere rule of procedure" when considered in the context of an immunity defense to a § 1983 action. In such cases, this general rule operates to deprive public officials of their right to appellate review of the denial of a federally guaranteed immunity. This Court has held on numerous occasions that state courts are precluded from applying rules that "impose unnecessary burdens upon rights of recovery authorized by federal laws." *Felder*, 108 S.Ct. at 2313, *citing Brown v. Western R. Co. of Alabama*, 338 U.S. at 298-299. *See also Monessen Southwestern R. Co. v. Morgan*, 108 S.Ct. 1837 (1988) (state rule intended to encourage settlement cannot limit recovery in federal action).

In *Felder*, this Court held that Wisconsin's notice of claim statute was preempted with respect to federal civil rights actions brought in state court because the statute interfered with a federal right. *Felder*, 108 S.Ct. at 2302. *See also Brown v. Western Railway of Alabama*, 338 U.S. 294 (1949) (Court refused to accept state court's interpretation of allegations in plaintiff's complaint asserting a federal right). Although *Felder* involved a state law which worked to the detriment of civil rights plaintiffs, no compelling reason would support a relaxation of those principles where the substantive rights of civil rights defendants are at stake. Accordingly, in dismissing Mayor Lanzillotti's appeal for lack of jurisdiction, the Illinois Appellate Court interfered with his substantive federal right to appellate review of the denial of his claim of absolute immunity. *Mitchell*, 472 U.S. at 511; *Nixon*, 457 U.S. at 731.

Furthermore, principles of uniformity compel the application of *Mitchell* and *Nixon* to § 1983 actions brought in state court. Congress has expressed its desire that the

federal civil rights laws be given uniform application within each state. *Felder*, 108 S.Ct. at 2314. For instance, in *Wilson v. Garcia*, § 1983 actions were characterized as personal injury claims so as to insure that the same limitations period would govern all § 1983 suits brought in any given state. *Wilson*, 471 U.S. at 261.

Illinois courts must permit their public officials, in accordance with federal law, to immediately appeal the denial of a claim of immunity in a § 1983 action. Without deciding whether adherence to federal law was mandatory, several other state courts have recently embraced the principles enunciated in *Mitchell* and *Nixon* and held that the denial of a claim of official immunity is a final and appealable order. *See, e.g., Robinson v. Beaumont*, 291 Ark. 477, 725 S.W.2d 839 (1987); *Stein v. United States*, 532 A.2d 641 (D.C. App., Oct. 15, 1987); *State of Maryland v. Hogg*, 311 Md. 446, 535 A.2d 923 (1988); *Breault v. Chairman of the Board of Fire Commissioners of Springfield*, 401 Mass. 20, 513 N.E.2d 1277 (1987); *Anderson v. City of Hopkins*, 393 N.W.2d 363 (Minn. Sept. 19, 1986). *Accord, Guider v. Smith*, 431 Mich. 559, 431 N.W.2d 810 (1988); *Celebreeze v. Netzley*, 1988 WL 87566 (Ohio App. August 4, 1988). *But see, Ohio Civil Service Employees Assoc. v. Moritz*, 39 Ohio App. 3d 132, 529 N.E.2d 1290 (1987); *Noyola v. Flores*, 740 S.W.2d 493 (Tex. Ct. App. 1987). Illinois' failure to even consider the principles which have led these state courts to adopt *Nixon* and *Mitchell* requires this Court's intervention to ensure the uniform development of civil rights laws.

This Court recently expressed in *Felder* that "a law that predictably alters the outcome of § 1983 claims depending solely on whether they are brought in state or federal court within the same state is obviously inconsistent with this federal interest in intra-State unformity." *Felder*, 108 S.Ct. at 2314. The Illinois Appellate Court's refusal to con-

sider the merits of Mayor Lanzillotti's appeal pursuant to the collateral order doctrine alters the outcome of this § 1983 action by limiting the Mayor's immunity from the burdens of civil rights litigation simply because Pizzato's pursued its claims in state court. In rejecting federal law, the Illinois court has evaded Congress' intent that federal civil rights laws be given uniform application within each state.

CONCLUSION

Petitioners, City of Berwyn and Mayor Joseph J. Lanzillotti, respectfully submit that this Court should grant this Petition and direct a Writ of Certiorari to the Appellate Court of Illinois, requiring the Appellate Court of Illinois to provide for immediate review of the trial court's order denying Mayor Lanzillotti's motion to dismiss based on his claim of absolute immunity.

Respectfully submitted,

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APPENDIX

FOURTH DIVISION
March 31, 1988

87-0201

PIZZATO'S INC., an Illinois corporation,
HORACE D'ANGELO and JOHN BURNETT,

Plaintiffs-Appellees,

v.

CITY OF BERWYN and MAYOR JOSEPH J. LANZILLOTTI,

Defendants-Appellants.

Appeal from the Circuit Court Cook County.
Honorable Myron T. Gomberg, Judge Presiding.

PRESIDING JUSTICE JIGANTI delivered the opinion of the court:

This is an action by the plaintiffs, Pizzato's Inc., to recover damages for violations of their civil rights under section 1983 of the Civil Rights Act. (42 U.S.C. § 1983.) The violations stem from the alleged malicious and bad-faith refusal by the defendants, the City of Berwyn and Mayor Joseph J. Lanzillotti, the local liquor commissioner, to issue a liquor license to the plaintiffs.[1] Lanzillotti moved to dismiss the claims against him on the basis that he enjoyed absolute immunity from suit while acting in his quasi-judicial capacity as a local liquor commissioner. The

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[1] In a separate count, the plaintiffs requested a writ of *mandamus* compelling the defendants to issue the liquor license. The trial court granted the writ of *mandamus* and we affirmed in an unpublished order in an earlier appeal to this court. *Pizzato's Inc. v. City of Berwyn* (1984), 129 Ill. App. 3d 1153.

trial court denied the motion to dismiss and refused Lanzillotti's request to certify the question pursuant to Supreme Court Rule 308. (87 Ill. 2d R. 308.) Lanzillotti has appealed, contending that the trial court erred in denying the motion to dismiss.

The plaintiffs contend that we lack jurisdiction to consider this appeal because the denial of Lanzillotti's motion to dismiss is not a final and appealable order. The defendants, however, ask us to assume jurisdiction pursuant to the "collateral order" doctrine which has been adopted in the Federal courts. Under this doctrine, the denial of a substantial claim of absolute immunity is considered to be a final and appealable order. *Nixon v. Fitzgerald* (1982), 457 U.S. 731, 73 L. Ed. 2d 349, 102 S. Ct. 2690.

Article VI, section 6, of the Illinois Constitution of 1970 confers jurisdiction upon the appellate court. (Ill. Const. 1970, art. VI, § 6.) It provides that "[a]ppeals from final judgments of a Circuit Court are a matter of right to the Appellate Court * * *." It further provides that "[t]he Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments * * *." The denial of a motion to dismiss is not a final and appealable order. (*People v. American National Bank & Trust Co.* (1965), 32 Ill. 2d 115, 117, 203 N.E.2d 897; *Camp v. Chicago Transit Authority* (1980), 82 Ill. App. 3d 1107, 1110, 403 N.E.2d 704.) Consequently, jurisdiction of the appellate court to consider an interlocutory appeal must emanate from the Supreme Court Rules. The only Supreme Court Rules concerning appeals from interlocutory orders are Rules 306, 307 and 308. (87 Ill. 2d Rules 306, 307, 308.) Rule 306 provides for permissive interlocutory appeals in certain specified situations, and Rule 307 provides for interlocutory appeals as a matter of right from specified orders. Rule 308 provides for permissive interlocutory appeals under circumstances where the trial court certifies a question. The trial court in the case at bar did not certify the question under Supreme Court Rule 308 and it is not suggested that this appeal comes within the pur-

view of Supreme Court Rules 306 or 307. The supreme court not having provided by rule for an appeal from this type of order, this court accordingly lacks jurisdiction to consider the appeal. The defendants ask us to assume jurisdiction based upon a rule of procedure adopted and employed by the Federal courts. Regardless of how well reasoned the "collateral order" doctrine may be, it cannot be used to confer jurisdiction upon this court where none exists under Illinois law.

The appeal is accordingly dismissed and the cause is remanded to the trial court for further proceedings.

Dismissed and remanded.

LINN and McMORROW, JJ., concur.

[*Letterhead Of*]

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No. 66923—Pizzato's, Inc., etc., et al., respondents, v. City of Berwyn, et al., petitioners. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1988.

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PIZZATO'S, INC., et al.,

Plaintiffs,

v.

CITY OF BERWYN, et al.,

Defendants.

CIVIL ACTION
No. 82 L 10910

ORDER

This matter coming before the court upon Defendants' Motion To Strike and Dismiss. The court having considered the briefs and counsel for all parties as well as oral argument.

IT IS HEREBY ORDERED:

1. The motion to dismiss Defendant LANZILLOTTI is DENIED.

2. The claim for punitive damages against Defendant CITY OF BERWYN in Count II of the Complaint is stricken.

SIGNED and ENTERED this 17th day of September, 1986.

/s/ MYRON T. GOMBERG
MYRON T. GOMBERG
JUDGE
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PIZZATO'S, INC., et al.,

Plaintiffs,

v.

CITY OF BERWYN, et al.,

Defendants.

CIVIL ACTION
No. 82 L 10910

ORDER

This matter coming before the Court upon Defendants' "Motions (A) For Reconsideration Of The Court's Order Of September 17, 1986 Denying Its Motion To Dismiss Or, In The Alternative; (B) For Certification Of The Question Of The Court's Order Of September 17, 1986 For Interlocutory Appeal Pursuant To Illinois Supreme Court Rule 308 Or, In The Alternative, (C) For A Written Finding By The Court That There Is No Just Reason For Delaying Enforcement Or Appeal Pursuant To Either Supreme Court Rule 303 or 304", the court having read briefs on those motions and having heard oral argument,

IT IS HEREBY ORDERED:

The foregoing motions filed by defendants are DENIED.

SIGNED and ENTERED this 31st day of December, 1986.

/s/ MYRON T. GOMBERG
MYRON T. GOMBERG
JUDGE
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.